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OFFICE OF PETITIONS

In re Application of :
Kaminski :
Application No. 10/521,936 :
Filed: February 7, 2006 :
Attorney Docket No. 0088567-027US0 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed on September 3, 2010.

The petition is **DISMISSED AS MOOT**.

A review of the application file revealed that a Notice of Panel Decision From Pre-Appeal Brief Review was mailed in this application on March 4, 2010. The notice allowed a period for filing appeal brief of one month from its mailing date or the balance of the two month period from the receipt of the Notice of Appeal. In any case, the notice also stated that extensions of the times set for reply were available pursuant to 37 CFR 1.136(a). The Notice of Appeal was filed January 6, 2010. On September 3, 2010, an appeal brief was filed along with the instant petition.

This petition is improper because it has been filed prematurely as the application is not abandoned. The petition was filed during the extendable period set for reply to the Notice of Panel Decision From Pre-Appeal Brief Review¹, and the appeal brief is considered timely filed as long as it is accompanied by a request for an extension of time within the fifth month. A request for an extension of time within the fifth month is also noted as having been obtained on September 3, 2010—within the period for reply to the Notice of Panel Decision From Pre-Appeal Brief Review. Accordingly, the petition fee of \$810.00 is being refunded.

The application file will be directed to Technology Center 1600, GAU 1633 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

¹ The period for reply ran from the mailing date of the Notice of Panel Decision from Pre-Appeal Review with one month given and five additional months extendable. The extended period for reply to the notice ended September 4, 2010.